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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (PSG)

**ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S
OPPOSITION TO ARISTA'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Judge: Hon. Beth Labson Freeman

02099-00004/8153425.3

ADMINISTRATIVE MOTION TO FILE UNDER SEAL CONFIDENTIAL INFORMATION IN
CISCO'S OPPOSITION TO ARISTA'S MOTION FOR PARTIAL SUMMARY JUDGMENT
Case No. 5:14-cv-05344-BLF

Pursuant to Civil Local Rules 7-11 and 79-5, Cisco Systems, Inc. (“Cisco”) hereby brings this administrative motion for an order to seal certain information filed in connection with Cisco’s Opposition to Arista Networks, Inc.’s (“Arista”) Motion for Partial Summary Judgment.

I. LEGAL STANDARD FOR SEALED MATERIALS IN CONNECTION WITH A DISPOSITIVE MOTION

This Court has previously explained the standards for filing under seal materials in connection with a dispositive motion, such as a motion for summary judgment. “Unless a particular court record is one ‘traditionally kept secret,’ ” a “strong presumption in favor of access” to judicial records “is the starting point.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.2003)). A party seeking to seal judicial records relating to a dispositive motion therefore bears the burden of overcoming this presumption by articulating “compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–79. Compelling reasons for sealing court files generally exist when such “‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Kamakana*, 447 F.3d at 1179.

Furthermore, in this District, parties seeking to seal judicial records must also follow Civil L.R. 79–5, which requires, *inter alia*, that a sealing request be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79–5(b). Where the submitting party seeks to file under seal a document designated confidential by another party (the “designating party”), the burden of articulating compelling reasons for sealing is placed on the designating party. *Id.* 79–5(e). *Cowan v. GE Capital Retail Bank*, No. 13–cv–03935–BLF, 2015 WL 1324848, at *1 (N.D. Cal. Mar. 24, 2015) (J. Freeman).

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1 Examples of materials that have been sealed under this standard include :

- 2 • Documents relating to the “internal procedures for addressing cardholder fraud
- 3 notifications” of a bank, *id.* at *2-3;
- 4 • Documents containing “information about [a party’s] business performance, structure, and
- 5 finances that could be used to gain unfair business advantage against them,” *Schwartz v.*
- 6 *Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016) (J.
- 7 Freeman);
- 8 • Documents containing “highly sensitive information regarding [a party’s] product
- 9 architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF,
- 10 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014) (J. Freeman);
- 11 • Documents in the form of “emails containing information about [a party’s] business
- 12 practices, recruitment efforts, and discussions regarding potential partnerships with other
- 13 product manufacturers,” *Koninklijke Philips N.V. v. Elec-Tech International Co., Ltd.*, No.
- 14 14–cv–02737–BLF, 2015 WL 581574, at *1-2 (N.D. Cal. Dec. 10, 2015) (J. Freeman); and
- 15 • Documents containing “information regarding non-public recruitment efforts and business
- 16 practices” of a party, *id.* at *2-3.

17 **II. MATERIALS FOR WHICH CISCO REQUESTS SEALING**

18 Cisco requests the sealing of certain documents which contain confidential Cisco
 19 information, for the compelling reasons explained in detail in the Declaration of Sara E. Jenkins in
 20 support of this Administrative Motion to File Under Seal (“Jenkins Declaration”). Cisco has
 21 narrowly tailored its requests to seal only confidential information as detailed in the Jenkins
 22 Declaration.

23 In addition, with its Opposition to Arista’s Motion for Partial Summary Judgment, Cisco is
 24 filing certain materials that were previously designated as confidential by Arista and third parties.
 25 Cisco files this motion to provide Arista and the third parties the opportunity to file a supporting
 26

1 declaration pursuant to Civil L.R. 79-5(e)(1). Cisco does not yet know which of those materials, or
 2 which portions of those materials, Arista will seek to have sealed through a supporting declaration.

3 The documents, and portions of documents, that Cisco seeks to seal through this motion
 4 are included in the chart below:

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Opposition")	Highlighted Portions	Arista
Exhibits 1-4; 36-37; 51-53 to the Declaration of John M. Neukom in Support of Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Neukom Declaration")	Entire	Arista
Exhibit 46 to the Neukom Declaration	Highlighted Portions	Arista
Exhibit 6 to the Neukom Declaration	Highlighted Portions	Cisco
Exhibit 9 to the Neukom Declaration	Entire	Cisco
Exhibit 1 to the Declaration of Kevin Almeroth in Support of Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Almeroth Declaration")	Highlighted Portions	Arista, Cisco, Hewlett Packard
Exhibit 2 to the Almeroth Declaration	Highlighted Portions	Arista, Cisco, Dell
Exhibit 3 to the Almeroth Declaration	Entire	Arista, Cisco

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Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Exhibit 1 to the Declaration of Kevin Jeffay in Support of Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Jeffay Declaration")	Entire	Arista

IV. CONCLUSION

Concurrently with this Motion, Cisco is filing redacted and highlighted versions of the above-referenced documents, where applicable, indicating the specific portions Cisco requests to seal.

Dated: July 14, 2016

Respectfully submitted,

/s/ John M. Neukom
John M. Neukom

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